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June 6, 1977

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The Honorable Frank J. Felix
Arizona State Senator
Senate Wing, State Capitol
Phoenix, Arizona 85007

Re: 77-120 (R77-121)

Re: A.R.S. § 36-601.01

Dear Senator Felix:

You ask in your March 31, 1977, opinion request whether the term "school building" in A.R.S. § 36-601.01.A.5, which governs smoking in public places, includes community colleges, universities and private schools. I conclude that it does.

There is no definitional section to A.R.S. § 36-601.01. However:

Language used in a statute should be given its ordinary, common meaning as understood by the average man, unless obviously used in a technical sense, or unless such construction would result in an absurdity.

Valley National Bank of Arizona v.
Educational Credit Bureau, Inc., 23 Ariz.
App. 148, 150, 531 P.2d 193, 195 (1975)

The terms used in A.R.S. § 36-601.01 are not words of art having a rigid and precise meaning but rather broad terms of description. The purpose of the statute is to protect public health by prohibiting smoking in certain places.

. . . [A] measure whose clear purpose is the protection of the public health and welfare . . . is entitled to a liberal construction for the accomplishment of its beneficent objective.

State v. Sanner Contracting Co., 109
Ariz. 522, 524, 514 P.2d 443, 445 (1973)

Article XI, Section 1 of the Arizona Constitution includes a university as part of the "public school" system:

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The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, normal schools, industrial schools, and a university. . . .

Thus, where the term "school" is used in broad general terms, it should be understood to include the universities and community colleges. The Legislature follows such a pattern as illustrated, for example, by its specific definition of the word "school" in limiting statutory application to the public common and high schools:

"School" means the public common or public high school. A.R.S. § 15-151.3 [Rights of parents and guardians to copy records.]

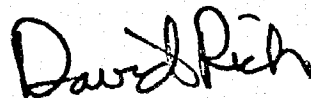
The term "school building" includes private schools since no distinction is made in A.R.S. § 36-601.01 between public and private school buildings.

As a general caveat, however, the impact of A.R.S. § 36-601.01 is potentially swallowed up by the exception in subparagraph C:

This section does not prohibit smoking in the areas listed in Subsection A if the smoking is confined to areas designated and posted as smoking areas.

Sincerely,

BRUCE E. BABBITT
Attorney General



DAVID RICH
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DR:jrs